



MAINE REVENUE SERVICES

(FORMERLY BUREAU OF TAXATION)

SALES/EXCISE TAX DIVISION

INSTRUCTIONAL BULLETIN NO. 4

CONTRACTORS AND SUBCONTRACTORS

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

The term "contractor" as used in this bulletin includes both contractors and subcontractors. Among others, it includes building, electrical, plumbing, heating, painting, decoration, paper hanging, masonry, carpentry, plastering, cement, road, bridge, landscape and roofing contractors and subcontractors. This bulletin does not apply to a person who is primarily a retailer, such as a carpenter who builds and sells furniture or a lumber shop that sells and installs prefabricated kitchen cabinets. Refer to Instruction Bulletin No. 28 for further information on activities of tradesmen.

"Construction contract", as used in this bulletin, means a contract for repair, alteration, improvement, remodeling or construction of real property.

1. RETAIL SALES BY CONTRACTORS

Although contractors are normally engaged in affixing to realty, they may act as retailers in certain situations. A contractor is a retailer when

- i. buying and selling materials and supplies at retail; or
- ii. building and selling cabinets, furniture and other items without installing them.

If the contractor is engaged in retail sales, a seller's certificate must be obtained from Maine Revenue Services and tax collected from the customer on sales of tangible personal property. In this situation, the contractor would purchase materials and supplies tax free from the supplier by presenting a resale certificate as explained below. A contractor may be considered a retailer even when engaged in carrying out a construction contract, provided title to the materials and supplies passes to the purchaser before they become affixed to the real estate. The contractor is accountable for the collection of the sales tax involved and the payment to the State of all taxes due based upon his gross receipts from retail sales.

a. Sales of gravel as tangible personal property. The sale of gravel and other types of soil by a contractor is a sale of tangible personal property. Where the contractor does nothing more than deliver the material as requested by the customer, whether such delivery is by dumping in a pile, by dumping in a fill or by truck spreading, the transaction is considered a sale of tangible personal property.

Example: A customer orders 8 yards of loam to reseed a lawn. The contractor does no more than dump the loam in an area designated by the customer. Sales tax applies to the total selling price.

b. Sales of gravel as real property. If the contractor performs additional services to the product, for example bulldozing and grading, the contractor is affixing the product to realty. The sale is considered a sale of real property. Sales tax would not apply to the sale of the product to the customer but the purchase would be taxable to the contractor.

Example #1: A contractor is hired to repair a customer's driveway. The contractor delivers the gravel and grades and compacts the driveway. The contractor would not charge sales tax on the gravel. Rather, the contractor would be subject to tax on the purchase of the gravel.

Example #2: A contractor hires a sub-contractor to fill in around a foundation and prepare proper drainage for the property. The sub-contractor delivers rock, fill and loam and excavates the property, spreading the delivered product. The sub-contractor would not charge the contractor sales tax on the rock, fill and loam. Rather, the sub-contractor would be subject to tax on the purchase of such materials.

If a contractor purchases gravel, loam, etc. and affixes the product to real property, the contractor should pay tax to the seller. If the seller does not charge a sales tax, the contractor is subject to a use tax. If the pit from which the gravel, loam, etc. is extracted is owned by the contractor, use tax would not apply.

2. CONSTRUCTION CONTRACTS IN GENERAL

When constructing new buildings, repairing existing realty or remodeling, a contractor is selling the materials used in the construction job after they are affixed to the realty. Therefore, the contractor is selling real property, not tangible personal property. Except as noted in (3) below, a contractor must pay the tax as a consumer on the purchase of materials and supplies used in fulfilling any kind of construction contract.

3. CONSTRUCTION CONTRACTS WITH EXEMPT ORGANIZATIONS

1760 (61) provides an exemption from sales and use tax on items which will be physically incorporated in real property of an exempt organization. This exemption only applies to lumber, hardware, doors and windows, nails, insulation and other building materials actually affixed to realty. Tools, wearing apparel, consumable supplies, machinery and equipment used by the contractor are taxable even if purchased specifically for the exempt job. Construction contracts with any of the following agencies or organizations qualify for this exemption:

- i. The Federal Government, the State of Maine or any of their agencies;
 - ii. Any city, town, plantation, district or political subdivision of the State of Maine; and
 - iii. Any organization holding a valid exemption certificate issued by Maine Revenue Services.
- (See Rule 302 for more information on exempt organizations.)

The contractor would purchase materials being incorporated in the real property tax free by furnishing the supplier with a "Contractor's Exempt Purchase Certificate" in the form set forth at the end of this bulletin. A certificate must be filed for each project stating the location of the project and the name and exemption certificate number, if any, of the exempt organization. This exemption does not apply where title is held or taken as security for any financing arrangement by a governmental agency as in the case of Municipal Industrial Revenue Bonds.

This section also applies to "Low-Rent Housing Turnkey" projects as described in Low-Rent Housing Turnkey Handbook (RHA 7420.1) issued by the U. S. Department of Housing and Urban Development. As a prerequisite, the developer or builder must enter into an agreement for the sale of land and improvements with a Local Housing Authority prior to the start of construction.

The contractor must maintain adequate records to support the use of exempt purchase certificates and to show the disposition of all materials purchased.

4. PURCHASES

a. Purchases for Own Use On those items which the contractor uses in the business rather than sells in the form of tangible personal property, tax should be paid to the supplier on the purchase. Trucks, tractors, scaffolding, and other machinery and equipment, tools and supplies such as pipe cutters, trowels, wrenches, oxygen, acetylene, acid and threadcutting oil used in the performance of construction contracts are taxable. This is true even though the equipment, tools and supplies are used in connection with a contract with an exempt organization. If purchases of such items are made from outside the State and tax is not paid to the supplier, the contractor should report and pay the use tax on the sales and use tax return, if registered, or remit the use tax directly to Maine Revenue.

If tax was paid to a supplier for materials which are exempt under Section 1 or 3 of this bulletin, the contractor is allowed to make an adjustment on the next sales tax return. If the contractor is not a registered retailer, the contractor would apply for a refund directly from Maine Revenue. If the contractor has bought materials and supplies free of tax, but later uses them as a consumer, the contractor must report these as "taxable purchases" on the next sales and use tax return, if registered, or remit the use tax directly to Maine Revenue.

b. Purchases for Resale. When a retailer purchases tangible personal property for resale as tangible personal property, the retailer should furnish the supplier with a resale certificate as provided in Rule 301. The certificate will enable the retailer to purchase tangible personal property for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover subsequent purchases. However, the retailer must state to the supplier whether the purchase is for resale or not and will be held responsible for the tax on any item purchased for

resale but subsequently used by the retailer. **Purchasers who avoid payment of tax through deliberate misuse of resale certificates will be subject to prosecution.**

5. FABRICATION

A contractor may in certain instances fabricate a part or all of an article used in a construction project. For example, a sheet metal contractor may manufacture roofing, cornices, gutterpipe, furnace pipe, furnaces, ventilation or air conditioning ducts or other items. If the fabricated item is manufactured for retail sale as tangible personal property, the sheet metal purchased by the contractor would be exempt from the sales tax. In this case, the contractor is a retailer and tax should be charged to the customer on the basis of the total selling price of the fabricated item. If the fabricated item is affixed to realty by the contractor, the contractor must pay tax on all material costs in fabricating the item.

6. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question, and should be directed to the:

**MAINE REVENUE SERVICES
SALES/EXCISE TAX DIVISION
P.O. BOX 1065
AUGUSTA, ME 04332-1065
TEL: (207) 287-2336
TTY (207) 287-4477**

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CONTRACTOR'S EXEMPT PURCHASE CERTIFICATE

I hereby certify:

That I am engaged in the performance of a construction contract with the following named government agency or exempt organization;

Full name of agency or organization

Address of agency or organization

Location and nature of project

That the above organization either holds exemption certificate No. _____ issued by Maine Revenue Services, Sales Tax Section or is to the best of my knowledge and belief exempt from the sales and use tax because it is an agency of the federal government, the State of Maine or a political subdivision of the State of Maine;

That this certificate is issued to cover purchases of materials that will be permanently incorporated into the real property belonging to the exempt organization or government agency indicated above.

Seller's Certificate Number, if any, of contractor_____.

Date _____

Signed _____

By _____

Address _____

ATTACHMENT #1
Excerpts taken from 36 M.R.S.A.

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36 § 1752. Definitions.

The following words, terms and phrases when used in chapters 211 to 225 have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

11. Retail sale. "Retail sale" means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. "Retail sale" also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.

13. Sale. "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase.

17. Tangible personal property. "Tangible personal property" means personal property that may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity. "Tangible personal property" includes any computer software that is not a custom computer software program.

36 §1760. Exemptions

No tax on sales, storage or use shall be collected upon or in connection with:

61. Construction contracts with exempt organizations. Sales of tangible personal property, to a construction contractor, which are to be physically incorporated in, and become a permanent part of, real property for sale to any organization or government agency provided exemption under this section, except as otherwise provided. In order to qualify for this exemption, the contractor must have entered into a construction contract with the exempt organization prior to the purchase of the tangible personal property.